

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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COYOTE SPRINGS INVESTMENT, LLC, a  
Nevada limited liability company, *et al.*,  
Plaintiffs,

v.

STATE OF NEVADA, on relation to its  
Division of Water Resources, Department of  
Conservation and Natural Resources, TIM  
WILSON, Nevada State Engineer,  
Defendants.

Case No. 2: 20-cv-1842-KJD-DJA

ORDER

Presently before the Court is Plaintiffs' Motion for Leave to File First Amended Complaint (#18). Defendants filed a response in opposition (#29) to which Plaintiffs replied (#32). Also before the Court is Plaintiffs' Motion to Remand (#19). Defendants filed a response in opposition (#30) to which Plaintiffs replied (#33).

I. Background

On August 28, 2020, the Coyote Springs Plaintiffs filed this action in the Eighth Judicial District Court, Clark County, Nevada as Case No. A-20-820384-B. Plaintiffs' Complaint alleged causes of action for inverse condemnation (Lucas and Penn Central regulatory takings), pre-condemnation damages, equal protection violations, a 42 U.S.C. §1983 claim, and a demand for attorneys' fees. Plaintiffs assert their Complaint was filed in Nevada's State District Court as each of Plaintiffs' claims are heavily intertwined with questions of Nevada state law.

On October 2, 2020, the Defendants removed the Complaint to the United States District Court for the District of Nevada due to the federal questions arising out of the inverse condemnation claims' references to the Fifth Amendment to the U.S. Constitution, the Equal Protection claim's references to the Fourteenth Amendment to the U.S. Constitution, and the

1 federal 42 U.S.C. §1983 claim. See Defendant's Notice of Removal, Doc. No. 1. Defendants'  
2 removal was based upon 28 U.S.C. §§ 1331; 1367(a).

3 Following removal to this Court, on October 9, 2020, Defendants filed their Motion to  
4 Dismiss Plaintiffs' Complaint (#4) in its entirety. On November 2, 2020, Plaintiffs filed their  
5 Opposition (#9) to Motion to Dismiss. The Opposition to the Motion to Dismiss included a  
6 request for leave to amend, should the Court determine that any of Plaintiffs' claims were  
7 insufficiently pled and subject to dismissal under Federal Rule of Civil Procedure ("Rule")  
8 12(b)(6).

9 Plaintiffs then filed the present motion to amend and motion to remand. Plaintiffs clarify  
10 that each of Plaintiffs' claims are entirely based in state law and that Plaintiffs have withdrawn  
11 their federally based claims and are not pursuing any federal claims or causes of action. Plaintiffs  
12 argue their original intent in this action was to allege primarily state law claims and to litigate the  
13 claim in Nevada state courts. According to Plaintiffs, the original Complaint referenced the U.S.  
14 Constitution as state courts often and regularly apply the federal law and standards to inverse  
15 condemnation claims and civil rights violations of the Nevada Constitution.

16 To clarify this intent to litigate in Nevada state court, Plaintiffs' [Proposed] First  
17 Amended Complaint<sup>1</sup> makes clear that the inverse condemnation claims and civil rights claims  
18 are all brought only under the Nevada Constitution's protections of property rights and equal  
19 protection of the law. Plaintiffs' equal protection claim is now clearly based on the Nevada  
20 Constitution and the 42 U.S.C. §1983 claim has been withdrawn from the [Proposed] First  
21 Amended Complaint. The only other changes from the initial complaint to the First Amended  
22 Complaint are found within Paragraph 66 of the [Proposed] First Amended Complaint wherein  
23 Plaintiffs, in the Nevada based Equal Protection Claim, allege facts related to the State's unequal  
24 treatment of Plaintiffs compared to its treatment of Moapa Valley Water District ("MVWD") in  
25 regards to application of the underlying State Orders 1303 and 1309, use of their water rights,  
26 and the application of the subdivision map moratorium. Having withdrawn any reliance upon  
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28 <sup>1</sup> Plaintiffs have attached the proposed amended complaint as required by Local Rule 15-1(a) which they did  
not do when they alternatively requested leave to amend in opposition to the motion to dismiss.

1 federal law in pursuit of their claims, Plaintiffs seek remand since the court would no longer  
2 have original jurisdiction.

## 3 II. Analysis

### 4 A. Motion to Amend

5 Pursuant to Rule 15, a party may amend its pleadings only by leave of the court after  
6 responsive pleadings have been filed and in the absence of the adverse party's written consent.  
7 Thornton v. McClatchy Newspapers, Inc., 261 F.3d 789, 799 (9th Cir. 2001). The court has  
8 discretion to grant leave and should freely do so "when justice so requires." Allen v. City of  
9 Beverly Hills, 911 F.2d 367, 373 (9th Cir. 1990) (quoting Fed. R. Civ. P. 15(a)). However, courts  
10 may deny leave to amend if (1) it will cause undue delay; (2) it will cause undue prejudice to the  
11 opposing party; (3) the request is made in bad faith; (4) the party has repeatedly failed to cure  
12 deficiencies; or (5) the amendment would be futile. Leadsinger, Inc., v. BMG Music Publ'g, 512  
13 F.3d 522, 532 (9th Cir. 2008).

14 Plaintiffs are forthright in acknowledging that they seek to amend the complaint for the  
15 sole purpose of removing all federal claims with the intention of having the action remanded to  
16 state court. The question is whether the factors fall on the side of the liberal rule in favor of  
17 amendment. Here, in the early stages of litigation, the motion to amend having been filed long  
18 before the deadline in the discovery plan and scheduling order, amendment will cause no undue  
19 delay. However, it cannot be said that Defendants will not suffer some prejudice from the  
20 amendment. But there is no indication that prejudice would be "undue." Plaintiffs cannot be  
21 forced to assert and litigate particular claims. The paramount policy of pleading is that "the  
22 plaintiff is the master of the complaint[.]" See Caterpillar, Inc. v. Williams, 482 U.S. 386, 398-99  
23 (1987). Rather than being made in bad faith, Plaintiffs admit that they seek amendment for the  
24 purpose of avoiding federal jurisdiction. Id. at 399 ("the plaintiff may, by eschewing claims  
25 based on federal law, choose to have the cause heard in state court").

26 Finally, Defendants rely on futility to oppose Plaintiffs' proposed amendments. However,  
27 the questions raised by Defendants go to the heart of Plaintiffs' claims. They involve questions  
28 of Nevada law, interpretation of Nevada statute, and public policy of substantial import that

1 should be resolved by the courts of Nevada. Accordingly, the Court grants Plaintiffs' motion to  
2 amend.

### 3 B. Motion to Remand

4 Federal courts have removal jurisdiction only if there is original jurisdiction over a suit.  
5 See 28 U.S.C. §1441(a); Caterpillar, 482 U.S. at 392 ("Only state-court actions that originally  
6 could have been filed in federal court may be removed to federal court by the defendant"). In  
7 effect, a party seeking to retain a case in federal court must show that plaintiff has either alleged  
8 a federal claim, a state claim that requires a resolution of a substantial issue of federal law, or a  
9 state claim completely pre-empted by federal statute. See American Well Works Co. v. Layne &  
10 Bowler Co., 241 U.S. 257, 260 (1916); Franchise Tax Bd. v. Construction Laborers Vacation  
11 Trust, 463 U.S. 1, 9 (1983); Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 65 (1987).

12 Here, Plaintiffs have amended the complaint to remove all federal claims. Defendants are  
13 correct in asserting that a plaintiff may not **compel** remand by amending a complaint to eliminate  
14 the federal claims that provided the basis for removal. See Sparta Surgical Corp. v. Nat'l Ass'n  
15 of Sec. Dealers, Inc., 159 F.3d 1209, 1213 (9th Cir. 1998). Retaining jurisdiction to adjudicate  
16 pendent state law claim is within the discretion of the Court. See 28 U.S.C. § 1367(c). Here, the  
17 Court finds that the claims raised by Plaintiffs substantially predominate over the claims which  
18 the Court had original jurisdiction over and the claims raise novel and complex issues of state  
19 law. See 28 U.S.C. § 1367(c)(1,2). Therefore, the Court declines to exercise its supplemental  
20 jurisdiction over the amended claims and remands them to state court.

### 21 III. Conclusion

22 Accordingly, IT IS HEREBY ORDERED that Plaintiffs' Motion for Leave to File First  
23 Amended Complaint (#18) is **GRANTED**;

24 IT IS FURTHER ORDERED that Plaintiffs' Motion to Remand (#19) is **GRANTED**;

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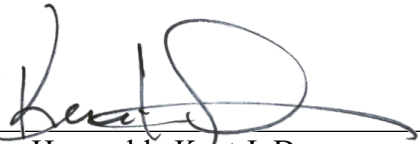
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1 IT IS FINALLY ORDERED that all other outstanding motions are **DENIED as moot.**

2 DATED this 28<sup>th</sup> day of September 2021.

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5 The Honorable Kent J. Dawson  
6 United States District Judge  
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